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SERVICE DATE - FEBRUARY 21, 2003

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34287

FNG LOGISTICS CO.–ACQUISITION AND OPERATION EXEMPTION–  
NEW YORK CENTRAL LINES, LLC  
VERMILLION AND WARREN COUNTIES, IN.

Decided: February 20, 2003

On November 25, 2002, FNG Logistics Co. (FNG) filed a notice of exemption under 49 U.S.C. 1150.31 to acquire and operate a 5.91-mile rail line (the Line) that was owned by New York Central Lines, LLC (NYC) and operated by CSX Transportation, Inc. (CSXT). The Line is located between milepost QSO-5.18 and milepost QSO-11.09 in Vermillion and Warren Counties, IN.

FNG is a subsidiary of Flex-N-Gate Corporation (Flex). Flex was authorized to acquire and operate the Line pursuant to the offer of financial assistance (OFA) procedures in 49 U.S.C. 10904 and 49 CFR 1152.27 in New York Central Lines, LLC–Abandonment Exemption–In Vermillion and Warren Counties, IN, STB Docket No. AB-565 (Sub-No. 4X) (STB served Sept. 17, 2002). According to FNG, Flex has designated FNG to enter into an agreement with NYC and CSXT to acquire and operate the Line in lieu of Flex.

Because Flex had been authorized to acquire and operate the Line under the OFA procedures in the abandonment proceeding, the notice of exemption filed by FNG in this proceeding to acquire the line from NYC and to operate it is unnecessary and inconsistent with the parties' evident plans to proceed under the OFA procedures. FNG's notice will therefore be rejected. The Board's rules at 49 CFR 1152.27(i) provide simple alternative means of carrying out what the parties intend. If, as recently reported, NYC has already transferred the Line to Flex, FNG, as an affiliate of Flex, may, as provided at 49 CFR 1152.27(i)(3), file a notice of exemption to acquire the Line from Flex.<sup>1</sup> Alternatively, if the parties wish to effect a transfer of the Line directly from NYC to FNG, permission

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<sup>1</sup> By letter filed on February 11, 2003, NYC and CSXT have stated that they transferred the Line to Flex on December 13, 2002.

to make a substitution of purchasers may be sought under 49 CFR 1152.27(i)(1), with the necessary showing of financial responsibility made under 49 CFR 1152.27(i)(1)(i) or (ii).<sup>2</sup>

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. FNG's notice of exemption in STB Finance Docket No. 34287 is rejected.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>2</sup> Board staff contacted counsel for FNG by telephone in November 2002, shortly after the notice was filed to advise counsel that the notice FNG had filed was unnecessary for a purchase within the OFA process and to point out the alternative of requesting substitution. The Board has received no further filings from FNG or Flex since that time.